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NEW HAMPSHIRE CENTRAL RAILROAD, INC.

P.O. Box 165, North Stratford, NH 03590-0165
(603) 922-3400 Fax: (603) 922-9058

May 30, 2007

The Honorable Vernon Williams
Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001



Re STB Finance Docket No 35022, New Hampshire Central Railroad, Inc -
Lease and Operation Exemption - Certain Lines of the State of New Hampshire
Department of Transportation

Dear Secretary Williams:

Attached for filing are the original and ten copies of New Hampshire Central Railroad's Response to the Joint Petition of Twin State Railroad Corporation and Trans Rail Holding Company for Stay of Transaction in connection with the above-captioned Docket. Also enclosed is a compact disc containing the Response. Please time and date stamp the extra copy of the Response and return it to my office at the following address:

Jack E. Dodd
Director of Marketing and Sales
New Hampshire Central Railroad, Inc
Post Office Box 28
Saint Albans, VT 05478-0028

If you have any questions, please contact me

Sincerely yours,

Jack E. Dodd
Director of Marketing and Sales

Enclosures

cc Edward W. Jeffrey, President, New Hampshire Central Railroad, Inc
Service List

ENTERED
Office of Proceedings
MAY 31 2007
Part of
Public Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35022



**NEW HAMPSHIRE CENTRAL RAILROAD, INC.
-LEASE AND OPERATION EXEMPTION-
CERTAIN LINES OF THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION**

**RESPONSE TO THE PETITION
OF TWIN STATE RAILROAD CORPORATION
AND TRANS RAIL HOLDING COMPANY
FOR STAY OF TRANSACTION**

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**Jack E. Dodd
Director of Marketing and Sales
New Hampshire Central Railroad, Inc.
Post Office Box 28
Saint Albans, VT 05478-0028
(802) 524-2035**

Dated: May 30, 2007

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SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35022



**NEW HAMPSHIRE CENTRAL RAILROAD, INC.
-LEASE AND OPERATION EXEMPTION-
CERTAIN LINES OF THE STATE OF NEW HAMPSHIRE
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**RESPONSE TO THE PETITION
OF TWIN STATE RAILROAD CORPORATION
AND TRANS RAIL HOLDING COMPANY
FOR STAY OF TRANSACTION**

New Hampshire Central Railroad, Inc. ("NHCR") hereby submits its Response (the "Response") to the Petition ("Petition") of Twin State Railroad Corporation ("TSRR") and Trans Rail Holding Company ("TRHC") ("Petitioners"), in which Petitioners request that the Surface Transportation Board ("Board") stay the instant transaction. NHCR respectfully requests that the Board not stay the effectiveness of NHCR's Notice of Exemption (NOE) because Petitioners have not satisfied the four requisite criteria for the granting of a stay. NHCR will demonstrate herein, for its part, why the Board should consider NHCR's NOE on its merits and not the commingling and intertwining of issues and matters not applicable to the NOE.

BACKGROUND

NHCR was founded in 1993 to operate a line of railroad between Colebrook, NH and North Stratford, NH. NHCR entered into a Railroad Operating Agreement ("NHCR Agreement") with the State of New Hampshire Department of Transportation ("NHDOT") for an initial term of five years with an option to renew for an additional five years. NHCR also filed an

Application with the Board's predecessor for authority to operate the line on June 4, 1993 in Finance Docket No 32309

In late 2000, NHCR and NHDOT modified the terms of the NHCR Agreement to include a line of railroad known as the Berlin Branch and Groveton Branch. NHCR filed its Verified Notice of Exemption with the Board to cover these additional lines in Finance Docket No. 34084 dated August 17, 2001. A year later, NHCR and NHDOT further modified the NHCR Agreement to provide for a ten year initial term and a renewal option for ten additional years. Included in this modification was a provision for NHCR, with the authorization of NHDOT, to include the line from Whitefield, NH to Lunenburg (Gilman), VT ("Subject Line") at some point in the future. The expectation was that the former American Tissue Company paper mill located at the west end of Subject Line would reopen and would become a prospective customer of NHCR.

On April 18, 2007, NHDOT advised NHCR in writing that it authorized NHCR to become the operator of Subject Line and that NHCR, in accordance with the NHCR Agreement, would submit the required filings.¹ NHCR filed its Verified Notice of Exemption to cover Subject Line on May 2, 2007. TSRR filed its Petition for Revocation of Notice of Exemption ("TSRR Petition") on May 8, 2007 and the State of Vermont Agency of Transportation ("Vermont") filed its Comments and Request for Revocation ("Request") on May 9, 2007. NHCR submitted its Comments on Vermont's Request ("NHCR Vermont Comments") on May 15, 2007 and its Comments on the TSRR Petition ("NHCR TSRR Comments") on May 18, 2007. On May 25, 2007, TSRR and TRHC filed their Joint Petition for Stay of the NOE.

¹ See Exhibit A to *New Hampshire Central Railroad, Inc. - Lease and Operation Exemption - Certain Lines of the State of New Hampshire Department of Transportation*, Finance Docket No 35022, May 2, 2007.

RESPONSE TO PETITIONERS' REQUEST FOR STAY OF TRANSACTION

Among the cases cited by Petitioners in support of their request is Finance Docket No 34410 which was decided by the Board on December 18, 2003. In 34410, the Board's decision did not grant the Petitioner a stay in that the Petitioner "failed to demonstrate any grounds for granting the requests to stay or revoke the exemption" and that none "of [the] criteria are met". The Board also said in its decision that "Given the strong statutory mandate to authorize these types of transactions, the petitioner has failed to make a sufficiently specific showing that would warrant revocation of the exemption authorized in this proceeding."² It is ironic that Petitioners would cite an earlier Docket in which the petitioner did not prevail. As NHCR will point out, Petitioners' grounds here can only result in the same outcome, i. e., the same decision by the Board.

Specifically, Petitioners state the four reasons why the stay should be granted. NHCR will address Petitioners' reasons in order. First, Petitioners assert that they have a strong likelihood of prevailing on the merits (Petition, Argument I A through D, Pages 8 through 20), including the assertion that the Board has not exempted the NOE. NHCR has already argued that the Board has not decided that this transaction is not exempted.³ Moreover, the NOE is not, and cannot be construed, as something even resembling an adverse discontinuance as Petitioners allege. Even more astounding is the assertion by Petitioners that the NOE is "aimed at accomplishing a replacement of TSR[R] as the Line's operator as confirmed to TRHC by NHCR" Petition, Page 9. At no time and in no manner did any director, officer, employee or agent of NHCR

² See *Buffalo & Pittsburg Railroad, Inc. - Acquisition and Operation Exemption - CSX Transportation, Inc.*, Finance Docket No. 34410, December 18, 2003.

³ See *New Hampshire Central Railroad, Inc. - Comments on the Petition of Twin State Railroad Corporation for Revocation of Notice of Exemption*, Finance Docket No. 35022, May 18, 2007.

represent or confirm to TRHC that this was the case. Petitioners also state that the application is adverse because it would “impair or discontinue Twin State’s right to operate” Petition, Page 9. As it has stated in recent filings, NHCR is only acting on the authority of NHDOT to operate Subject Line and the NOE, promulgated from that authority, should be considered by the Board solely on its merits. Petitioners also allege that the transaction is “not consensual” and that “. the exemption procedure is not applicable. ” NHCR submits that the contemplated transaction is in fact consensual in that NHDOT is willing to lease NHCR Subject Line and NHCR is willing to operate it.

The assertions made by Petitioners in Argument I B are a restatement of the same arguments made in the TSRR Petition. NHCR’s TSRR Comments addressed these assertions. The allegation that NH, “the entity which it claims authorized it to provide service” is without base, Exhibit A to the NOE is clear and convincing evidence that NH gave NHCR the authority to operate Subject Line, and Exhibit A speaks for itself. Petitioners also state that “NHCR plainly cannot acquire a greater interest than is held by its grantor” This is true, since NHCR is not purchasing Subject Line from NH which, in this case, is not the grantor but the lessor, a grantor defined as “one that conveys property or a right in property by deed”.⁴

Regarding Petitioners’ Argument II (Petition, Pages 20 through 24), although NHCR believes it inappropriate to comment on the financial arrangements between TSRR and TRHC, it is worth noting that Petitioners suggest that NHCR “might seek an operating agreement from Twin State” with respect to cost-sharing for rehabilitation and maintenance of Subject Line. Petitioners state that NHCR “has followed through with neither course of action” While it is fact

⁴ Merriam-Webster’s Dictionary of Law ©1996

that NHCR has not approached Twin State regarding sharing of expenses for any rehabilitation or maintenance that Subject Line might require, it is unclear to what other “course of action” Petitioners refer. If Petitioners are inferring that NHCR should participate in an adverse discontinuance against TSRR, the only other action mentioned by Petitioners (Petition Page 21), then NHCR’s position is that it would not be a party to such a proceeding.

Furthermore, Petitioners presume that they will rehabilitate and maintain Subject Line and, if NHCR does not agree to a payment arrangement, then NHCR will “receive a windfall.” After a favorable decision from the Board on NHCR’s NOE, and before NHCR commences operations, it, and not Petitioners, will inspect Subject Line and ensure it is serviceable and ready to accommodate freight traffic. Thus, the assertion that NHCR will receive a windfall is without merit.

Moreover, TSR presumes that NHCR’s presence “will result in the diversion of traffic from TSR.” With a favorable decision from the Board, NHCR will be the only carrier serving customers, including Dirigo, on Subject Line, and the only diversion of traffic will be from motor carriers to rail, which is more efficient, cost-effective and environmentally friendly.

Referring to Petitioners’ Argument III (Petition, Pages 24 and 25), Petitioners assert that no party to this proceeding will be harmed by a stay. NHCR disagrees with not only Petitioners’ assertion, but also with the statement by Mr. David Wulfson, President of TRHC, “that [NHCR] does not expect to be able to commence operations earlier than August 1, 2007.” Mr. Edward Jeffrey (correcting, for the record, the spelling of Mr. Jeffrey’s last name), President of NHCR, advised Mr. Wulfson recently that NHCR will be able to commence operations on or about June 30, 2007, since the repairs to the two rail bridges east of Whitefield are underway. Thus, NHCR will be in a position to begin providing rail service on Subject Line sooner than asserted by

Petitioners See Exhibit A, Verified Statement of Edward W Jeffrey With the commitment of time and resources already expended by NHCR, a stay will harm NHCR by not allowing it to begin recouping its investment in Subject Line, to continue to satisfy its obligations to NH as the lessee of Subject Line and to prepare for the provision of efficient, reliable rail service on Subject Line

As concerns Petitioners' Argument IV (Petition, Pages 25 and 26), NHCR takes great umbrage in Petitioner's assertion of "abuse of the exemption notice procedure" Petition, Page 25 As NHCR has stated in its Comments to Vermont and TSRR, it was authorized by the lessor, NH, to be the designated operator of Subject Line and has followed through by filing its NOE **Petitioners also allege that NHCR had "apparent and imputed full knowledge of [NH's] representations . " NHCR has also stated in its Comments to Vermont and TSRR that it was not a party to any of the proceedings in which NH was involved with respect to Subject Line and that it had no standing or effect in the decisions promulgated from those proceedings** **Petitioner's second reason "why the public interest favors a stay because rail service to Dirigo may be limited in terms of "quantity and quality" is baseless NHCR has every reason to believe that its service, in both quantity and quality, will be equal to, or better than, that enjoyed by Dirigo's predecessors NHCR is prepared to dedicate the necessary resources to provide the service that its customers, including Dirigo, will require and, in sum, satisfy its customers' rail transportation requirements**

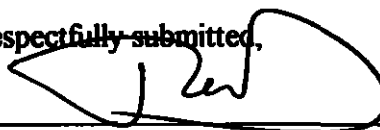
NHCR also finds it necessary to respond to an assertion made by Mr Wulfson in his Verified Statement, noted as Exhibit 2 to the Petition Mr Wulfson asserts that NHCR, in its Comments of May 15, 2007, "acknowledges that Vermont retains this right [to designate an operator of Subject Line]" Wulfson V S , Page 2 This is simply not the case In its Comments

of May 15, 2007, NHCR compares and contrasts the two settlement agreements, from 1983 and 1998, between Vermont and LVRC et al, with respect to Vermont's right to name a new operator for Subject Line. The former settlement agreement presumably gave Vermont the right to name a new operator if conditions resulting in a default by LVRC were fulfilled. The latter settlement agreement, however, provided, in part, that Vermont would not consider LVRC's surrender of a leasehold on the Vermont-owned line west of St. Johnsbury a default and waived "any and all future right . to designate a carrier other than TSRR to operate the Twin State Segment". A fair reading of both settlement agreements cannot lead the reader to conclude otherwise.

CONCLUSION

NHCR has demonstrated in the foregoing Response that Petitioners have failed to satisfy the four criteria for issuance of a stay, all four criteria being conditions precedent for a stay to be issued. In this light, NHCR respectfully requests that the Board agree with its position herein and decide in its favor so that NHCR may provide efficient and reliable freight rail service to present and future customers of Subject Line.

Respectfully submitted,



Jack E. Dodd, Director of Marketing and Sales
New Hampshire Central Railroad, Inc
Post Office Box 28
Saint Albans, VT 05478-0028
(802) 524-2035

CERTIFICATE OF SERVICE

I hereby certify that I have this 30th day of May, 2007, served a copy of the foregoing on the following parties by first class mail, postage prepaid

Christopher Morgan, Administrator
Bureau of Rail & Transit
New Hampshire Department of Transportation
John O Morton Building
7 Hazen Drive, P O Box 483
Concord, NH 03302-0483

Steven G Labonte, Esq
Assistant Attorney General
Transportation and Construction Bureau
The State of New Hampshire
33 Capitol Street
Concord, NH 03301-6397

John K Dunleavy, Esq
Assistant Attorney General
Vermont Agency of Transportation
National Life Building
One National Life Drive
Montpelier, VT 05633-5001

Leonard M Singer, Esq
101 Arch Street, 9th Floor
Boston, MA 02110

Andrew P Goldstein, Esq
Nicole S Allen, Esq
McCarthy, Sweeney & Harkaway, PC
2175 K Street, N W , Suite 600
Washington, DC 20037


A handwritten signature in black ink, appearing to read "Jack E. Dodd", is written over a horizontal line. The signature is stylized with a large loop at the end.

Jack E. Dodd

**VERIFIED STATEMENT OF
EDWARD W. JEFFREY**

My name is Edward W. Jeffrey. I am President of New Hampshire Central Railroad, Inc., ("NHCR") with headquarters in North Stratford, NH.

I founded NHCR in 1993, by leasing certain lines owned by the New Hampshire Department of Transportation ("NHDOT"). These lines are located between Colebrook and North Stratford, NH, the lease for which began in 1993, and between Groveton and Whitefield, NH, the lease for which began in 2000. To facilitate the lease of these lines, NHCR and NHDOT entered into a railroad operating agreement with an original term of five years, and a renewal option for five years, for each line.

In 2002, NHCR and NHDOT renegotiated the existing railroad operating agreement to provide for a term of ten years with a renewal option for ten years. NHDOT and NHCR also agreed to include a provision that, if and when so authorized by NHDOT, NHCR would be able to provide rail freight service on the segment of line between Whitefield, NH and Lunenburg (Gilman), VT and include this line in the railroad operating agreement. This was done anticipating that, at some future time, the former American Tissue Company paper mill located at Gilman would reopen and require rail service.

When it became apparent that progress was being made toward the reopening of the mill, we approached economic development officials in both NH and VT to determine who would be the appropriate contact persons that would be involved in purchasing the facility. In early 2003, we spoke with the mill contact persons and advised that NHCR would be prepared to provide rail service to the mill when the mill was ready to produce market paper. We developed rail rates with the concurrence of connecting carriers and presented them to mill management, which

advised that it would be at some point in the future before sufficient quantities of inbound commodities and outbound shipments of finished product would result in the need for rail service. Moreover, we attended several public meetings in both NH and VT which preceded the restart of the mill. Economic development officials from both states welcomed the fact that NHCR had shown an interest in serving the mill, as they recognized the importance of rail service

We had occasional discussions with the mill during the period from 2004 to 2006. In early 2007, however, we met with mill management to see if business had grown to the point where rail would be a viable transportation option. Origins of raw materials and some sample destinations of finished paper were furnished to our Director of Marketing and Sales, and at this time, rates are being finalized and should be in place in the next few weeks.

I have reviewed the Joint Petition for Stay submitted by Twin State Railroad Corporation and Trans Rail Holding Company, as well as all prior filings in this matter. As we have mentioned in our Reply to this Petition, we have simply complied with the instructions given to us by NHDOT, our "landlord", regarding operation of the Whitefield-Lunenburg Line. We have also mentioned that the Line can be in service by the end of June, contrary to the assertions of David W. Wulfson in his Verified Statement, and we will reposition locomotives and crews to handle the rail traffic for Dirigo, and any other prospective customer on the Line.

In summary, NHCR is making the necessary preparations to restore service on the Whitefield-Lunenburg Line. NHCR looks forward to serving Dirigo and other customers with efficient and cost-effective rail service now and in the future.

May 29 07 10:14p

Jack. E. Dodd

VERIFICATION

Edward W. Jeffrey, being duly sworn, deposes and avers that the foregoing Verified
Statement is true and correct, to the best of his information, knowledge and belief


Edward W. Jeffrey

Sworn and subscribed before me this 30th day of May, 2007


Beth M. Goudreau
Notary Public

State of New Hampshire, County of C00S
On this the 30 day of May, 2007, before me
Beth M. Goudreau, the undersigned officer,
personally appeared Edward W. Jeffrey,
known to me (or satisfactorily proven) to be the person
whose name is subscribed to the within instrument and
acknowledged that he/she executed the same for the
purposes therein contained, in witness whereof, I
hereunto set my hand and official seal

BETH M. GOUDREAU
Notary Public - State of New Hampshire
My Commission Expires April 6, 2011